

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SONTAY T. SMOTHERMAN,

Plaintiff, : Case No. 2:19-cv-4505

-vs- Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura

DENISE N. ERRETT,

Defendant.

OPINION AND ORDER

This matter comes before the Court for consideration of Plaintiff's Motion for Relief from Judgment (ECF No. 18). For the reasons that follow, the Court **GRANTS** Plaintiff's Motion.

I. PROCEDURAL HISTORY

On October 9, 2019, Plaintiff Sontay Smotherman filed a *pro se* Complaint alleging that former court reporter Denise Errett violated his civil rights under 42 U.S.C. § 1983 by altering a transcript of his prior criminal trial. (ECF No. 1). The Plaintiff's address is listed on ECF as Inmate Number 70203-061, FCI Ashland, P.O. Box 6001, Ashland, Kentucky 41105.

On October 31, 2019, the Magistrate Judge ordered Plaintiff to pay the \$400 filing fee or submit an application to proceed *in forma pauperis* by November 14, 2019. (ECF No. 7). The Magistrate Judge also cautioned Plaintiff that "his failure to timely comply with this Order will result in dismissal of his case." (*Id.*). The Clerk's Office mailed the Order and Notice of Deficiency to the Ashland, Kentucky address. Plaintiff did not pay the filing fee or submit an application to proceed *in forma pauperis* by the November 14 deadline. On November 15, the

mailed Order and Notice of Deficiency was returned to the Clerk’s Office as “Refused/Unable to Forward.” (ECF No. 8).

On November 18, 2019, the Magistrate Judge issued a Report and Recommendation (“R&R”) that Plaintiff’s action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. (ECF No. 9). The Magistrate Judge noted that while mail sent to Plaintiff was returned as undeliverable, “Plaintiff has an affirmative duty to notify the Court of any change in address.” (*Id.* at 2). The R&R also notified Plaintiff that he had fourteen days to file an objection. (*Id.* at 4). The Clerk’s Office mailed the R&R to Plaintiff at the Ashland, Kentucky address. Plaintiff did not file an objection to the R&R. On December 2, 2019, the R&R was returned to the Clerk’s Office as “Return to Sender.” (ECF No. 10).

On December 9, 2019, the Court adopted the R&R and dismissed the Complaint without prejudice. (ECF No. 11). Again, the Clerk’s Office mailed the Order to Plaintiff at the Ashland, Kentucky address.

On December 18, 2019, the Sixth Circuit dismissed as moot Plaintiff’s petition for a writ of mandamus asking it to compel this Court to file and docket his civil-rights complaint. (ECF No. 13). The Sixth Circuit noted that Plaintiff’s complaint had been filed, albeit deficient, and the issue was a “lack of notice to Smotherman of what he now needs to do.” (*Id.* at 2). The Sixth Circuit directed this Court “to take further steps in notifying Smotherman regarding the status of his complaint.” (*Id.*). It also noted that the envelope containing Plaintiff’s petition listed his address as 70203-061, United States Penitentiary, Big Sandy, P.O. Box 2068, Inez, Kentucky 41224. (*Id.* at 1).

Accordingly, this Court issued a Notice directing the Clerk’s Office to mail that Notice (ECF No. 14), the R&R (ECF No. 9), and the Court’s Order and Judgment (ECF Nos. 11, 12) to

Plaintiff. However, because the letter from the Sixth Circuit Case Manager listed Plaintiff's address as FCI Cumberland, P.O. Box 1000, Cumberland, Maryland 21501, the Clerk's Office mailed the directed filings to Plaintiff at the Cumberland, Maryland address and the Ashland, Kentucky address.

On December 30, Plaintiff filed a Notice requesting that this Court take judicial notice of the Sixth Circuit's Order. (ECF No. 17). Plaintiff followed up with a Motion for Relief from Judgment, filed on January 2, 2020. (ECF No. 18). In the signature block, Plaintiff lists his address as "70203-061, Federal Prison Camp, P.O. Box 1000, Cumberland, MD 21501." (*Id.*).

II. ANALYSIS

Plaintiff argues that the Court should set aside the Judgment because the Court erred in directing filings to be mailed to Plaintiff at the Ashland, Kentucky address.

In pertinent part, Fed. R. Civ. P. 60(b) states that "a court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason that justifies relief."

Plaintiff's listed address on ECF in this action was Inmate Number 70203-061, FCI Ashland, P.O. Box 6001, Ashland, Kentucky 41105. Accordingly, until the Sixth Circuit's Order, the Court sent all filings, including the Notice of Deficiency (ECF No. 7) and the Report and Recommendation (ECF No. 9) to this address. However, Defendant claims that he listed his return address on the envelope containing his Complaint as the Inez, Kentucky address noted by the Sixth Circuit.

Unfortunately, the envelope that contained Plaintiff's Complaint was not docketed in this action and no address is listed on the Complaint, Notice, or Civil Cover Sheet filed by Plaintiff. Thus, the Court has no way of verifying where this Ashland, Kentucky address came from,

except that it may have been listed as Plaintiff's address in one of Plaintiff's previous cases before this Court. Because of this unknown and because Plaintiff could have simply refiled this action, the Court finds that the relief sought is justified. Plaintiff's Motion is **GRANTED**, and the Court's December 9, 2019 Order and Judgment are **VACATED**.

Plaintiff is **ORDERED** to pay the \$400 filing fee by **FEBRUARY 20, 2020**.

Alternatively, Plaintiff may submit an application to proceed *in forma pauperis* under 28 U.S.C. § 1915(a) by the deadline, submitting the required affidavit and trust fund statement from his prison's cashier. Failure to timely comply with this Order will result in dismissal of this case.

Plaintiff is also cautioned that he has an affirmative duty to notify the Court of changes to his address. *Barber v. Runyon*, No. 93-6318, 23 F.3d 406 (Table), 1994 WL 163765, at *1 (6th Cir. May 2, 1994). Absent something filed in writing from Plaintiff, the Court will continue to send all filings in this case to the Cumberland, Maryland address provided by Plaintiff in his Motion for Relief from Judgment.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Relief from Judgment (ECF No. 18). The Court's Order and Judgment (ECF Nos. 11, 12) are **VACATED**. The Clerk is **DIRECTED** to **REOPEN** the case and send a copy of this Opinion and Order, the Pro Se Litigants Guide, and blank IFP documents to Plaintiff's current address: Sontay T. Smotherman, Inmate #70203-061, FCI Cumberland, P.O. Box 1000, Cumberland, Maryland 21501. The Clerk shall also update Plaintiff's listed address on ECF accordingly.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE